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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JERRY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees,

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

APPENDIX OF APPELLANTS

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QUESTIONS PRESENTED

I.

MAY THE STATE OF MICHIGAN PRECLUDE A PLAINTIFF FROM ASSERTING FEDERAL CIVIL RIGHTS CLAIMS GENERALLY, AND 42 USC §1983 CLAIMS SPECIFICALLY, IN THE STATE COURTS OF MICHIGAN WHEN THE CLAIM IS BASED UPON THE WRONGFUL ACTS OF INDIVIDUAL EMPLOYEES OF THE STATE OF MICHIGAN, ITS BRANCHES OR DEPARTMENTS, ON THE GROUNDS OF GOVERNMENTAL IMMUNITY, REGARDLESS OF THE CAPACITY IN WHICH THE EMPLOYEES ACTED OR THE NATURE OF THEIR ACTS?

II.

MAY THE STATE OF MICHIGAN PRECLUDE A CIVIL RIGHTS PLAINTIFF WHO BRINGS A CAUSE OF ACTION UNDER 42 USC §1983 FROM A TRIAL BY JURY?

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* The Complaint alleges violations of Amendments 1, 4, 5, 8 and 13 to the Constitution of the United States. The effect of the action of the Courts below is to deny Plaintiff's a Jury Trial (Amendment 7 U.S. Constitution, Michigan, Constitution of 1963, Article 14). Because of the summary nature of the proceedings below these questions were not expressly ruled upon.

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Appellees,

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order of Accelerated Judgment of the Circuit Court for the County of Wayne, State of Michigan, entered March 6, 1981, is not reported and is attached hereto as App. C. (*infra*. p. 5a). Said Order granted Accelerated Judgment and dismissed the Complaint. The Order of the Court of Appeals of the State of Michigan affirming the Order of said Circuit Court entered June 18, 1982 is not reported and is attached hereto as App. B. (*infra*. p. 3a). The Order of the Supreme Court of the State of Michigan entered April 20, 1983 denying Application for Leave to Appeal the Order of said Court of Appeals is unreported and is attached as App. A. (*infra*. p. 1a).

JURISDICTION

The Order of the Supreme Court of the State of Michigan (App. A. *infra*. p. 1a) was entered April 20, 1983.

Said Order, denying Application for Leave to Appeal had the effect of dismissing Plaintiffs' Complaint and was an Order of the Court of highest and final jurisdiction in the State of Michigan.

A Notice of Appeal to this Court and Proof of Service thereof, was filed on July 8, 1983.

The orders above described (See OPINIONS BELOW, *supra.)* denied that the Courts of general jurisdiction in Michigan had subject matter jurisdiction over the causes of action alleged in the Complaint (Apps. A, B, C *infra*. pp. 1-5a).

Plaintiff's claim that the Complaint pleads causes of action under 42 USC §1983 and violation of United States Constitutional guarantees and rights of Plaintiffs by the State of Michigan and certain individuals, jointly and severally. (The State not being alleged to be liable except in Count VII of the Complaint).

The jurisdiction of this Court is involved under 28 USC §1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Complaint raised violations of Federal Constitutional Rights (see, infra. p. 6) and the decision of the Courts below in effect denies the right to trial by Jury. (See, infra. pp 16-17). Because of the summary nature of the proceedings below no express decision on these matters was made.

42 USC 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The relevant provision of the Court of Claims Act of the State of Michigan (MCL, 600.6401) provide:

" . . . the jurisdiction of the court of claims as conferred . . . by this chapter . . . against the state . . . shall be exclusive. MCL 600.6419

"No claimant may be permitted to file a claim . . . who has an adequate remedy . . . in the federal courts . . ." MCL 600.6440

"The case shall be heard by the judge without a jury." MCL 600.6443

STATEMENT

I.

The Complaint (App. D infra. P. 7-25a) filed in the Circuit Court for the County of Wayne, State of Michigan named as Defendants the State of Michigan, named individuals, unknown agents, unknown persons and unknown officers.

From the allegations made in the Complaint, a proper cause of action was pled under 42 USC §1983 against all

Defendants, (state associated individuals) [1] except the State of Michigan which is not a "person".

The Complaint contained nine counts (I-IX) and twelve introductory paragraphs which were incorporated by reference in each count. Allegations against the State of Michigan were made only in Count VII. The remainder of the Complaint sought damages against individuals only.

No Answer was filed and there was no evidence before the Wayne County Circuit Court, a Court of original and general jurisdiction in Michigan.

Upon Motion of Defendants, made pursuant to Michigan General Court Rule 116 (GCR 116), Accelerated Judgment was granted and the Complaint was dismissed by Order of the Court (App. C *infra*., p. 5a) on the grounds that the Court lacked jurisdiction over the subject matter of the Complaint.

The Courts below have stated that the action was, in effect, against the State and therefore could be pursued only in the Court of Claims. (Apps. A B and C, infra., p. 1-5a)

The Michigan Court of Claims was established by, and its jurisdiction defined by, Michigan Public Act No. 170, 1964 (MCL 600.1401 et. seq.), which explicitly prohibits the Court of Claims from hearing actions which may be brought in the Federal Courts. The instant action was brought pursuant to 42 USC §1983, and therefore outside the statutory jurisdiction of the Michigan Court of Claims. MCL 600.6440. Furthermore, notwithstanding the prohibition of Federal statutory actions in the Michigan Court of Claims, jury trials are not allowed in that Court.

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[1] The term "state associated individuals" is used herein generically from time to time because the terms "officers, employees" are often used as words of art in immunity cases and decisions are made to depend on the word.

From the foregoing, the plight of Appellants is obvious: Their allegations of numerous forms of misconduct by State agents were dismissed by the Court of original and general jurisdiction on the ground that the action properly laid in a Court of limited jurisdiction which first, would not afford a jury, and second, was prohibited by statute from hearing the case. Appellants are therefore precluded from a trial by jury, if the case were heard in the Court of Claims, and precluded from a State forum entirely since the action is statutorily outside the jurisdiction of the Court of Claims.

Since this Court does not decide whether Michigan law is correctly determined by a final decision of its highest court, the question posed is whether Michigan may, by legislation or judicial interpretation of its common law, preclude a plaintiff in a civil rights case from a trial by jury or a forum all together, when the action is brought against State associated individuals.

To analyse the effect of the judicial action below, coupled with the statutorily limited jurisdiction of the Court of Claims, it is necessary to examine the Complaint in some detail.

Count I alleges actions of persons unknown in issuing warrants which falsely accused Appellants of a crime and alleges that the acts complained of were intentional and malicious. Judgment is sought against persons unknown.

Count II alleges that warrants were issued upon the false statements of Appellees Jury and Foremouth which imputed a crime to Appellants and constituted libel perse, thus, denying Appellants due process.

Count III alleges a cause of action against Appellees Goodman and Jury only for false statement in tax liens.

Count IV complains of a search warrant based upon the affidavit of Appellee Smith which affidavit was used to obtain a warrant when Smith knew the same to be insufficient, wrongful, malicious and unjustified. Judgment is sought against Appellee Smith only.

Count V alleges that Appellee Smith caused and permitted the issuance of a criminal search warrant which was unconstitutionally broad and that his acts were intentional, malicious, wrongful, unjustified and contrary to law. Judgment is sought against Smith only.

Count VI alleges a criminal trespass by individual Appellees and unknown officers, seizure of property not described in the Warrant used by the officers and other acts not authorized by the Warrant under which they acted. Judgment is sought against all Appellees, except the State of Michigan, Goodman, Jury and Faremouth.

Count VII alleges that an unknown agent, without a warrant, entered appellant's premises and removed a box of records. Judgment is sought against the state of Michigan and the unknown agent.

Count VIII alleges all individual defendants jointly and severally violated the civil rights of Appellants contrary to 42 USC §1983 and incorporates the allegations of the other Counts. Judgment is sought against the individual Appellees only.

Count IX is similar to Count VIII except that a violation of 42 USC §1986 is alleged. Judgment is sought against the individual Appellees only.

Thus, only Count VII seeks recovery against against the State of Michigan. Each Count incorporates by reference the numbered paragraphs of the preceding Counts, and the twelve (1-12) introductory paragraphs of the Complaint. (App. D *infra.*, pp. 5-27a, lead para. of each Count.)

Paragraph 12 of the general introduction of the Complaint alleges violations of the "1st, 4th, 5th, 8th, 13th and 14th Amendments to the Constitution of the United States.

The Order of the Circuit Court (App. C, *infra.*, p. 5a) does not address specifically the matter of whether the "lack of subject matter" jurisdiction extends to claims relating to these federal questions or to 42 USC §1983 or §1986 actions.

In the certified transcript of proceedings in the Circuit Court for the County of Wayne, State of Michigan, held on March 9, 1981 (App. E, *infra.*, p. 30a) the Honorable Thomas Roumell, Circuit Judge, stated:

> THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim for damages.
>
> You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out of the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.
>
> Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we're at, sir.

Under the circumstances, there being no other statement of the applicable law appearing in the proceedings in the Courts below, there is no Court of original general jurisdiction in Michigan that has jurisdiction over claims against individuals associated with the State of Michigan regardless of whether or not the individuals are acting within or without the scope of their authority, under color of law, in good faith or however acting, if money damages are sought.

QUESTION I IS SUBSTANTIAL

What has resulted in the Courts below is not easy to analyze. Was the State the real party in fact? Is the State a necessary party? Are the individuals totally immune? Does the Court of Claims have jurisdiction over the individuals, notwithstanding a statute to the contrary? There being no substantial record below, it is difficult to understand these questions.

Appellants assert that the dismissal of the instant case is analogous to the dismissal of the Complaint in *Scheuer* v *Rhodes*, 416 US 232, 40 L Ed 2d 90, 94 S Ct 168 (1974). In that case, the Federal District Court dismissed a 42 USC §1983 action on the ground that the action naming certain state government officials as defendants was, in substance and effect, an action against the State of Ohio and barred by the Eleventh Amendment to the Constitution of the United States. The Court of Appeals affirmed and also held that the Ohio common law of governmental immunity barred the action because it was against state officials. The Supreme Court reversed.

This Court specifically noted that no answer had been filed. (*id.* 235) The complaints were described as follows:

> ". . . In essence the defendants are alleged to have 'intentionally, recklessly, wilfully and wantonly caused an unnecessary deployment of the Ohio National Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform allegedly illegal actions which resulted in the death of plaintiffs' decedents. Both Complaints allege the action was taken "under color of state law" and that it deprived the decedents of their lives and rights without due process of law. Fairly read, the complaints allege that each of named defendants, in undertaking such actions, acted either outside the scope of his respective office or, if within the scope, acted in an arbitrary manner, grossly abusing the lawful powers of office. *id*, 235

The Court stated:

> ". . . The primary question presented is whether the District Court acted prematurely and hence erroneously in dismissing the complaint on the stated ground, thus precluding any opportunity for the plaintiffs by a subsequent proof to establish a claim."

The Court reviewed the function of trial courts in ruling on motions to dismiss noting the usual rules that the issue is not whether the plaintiff will prevail but whether he is entitled to offer proof and that the allegations of the complaint are taken in the light most favorable to the pleader. The Court then quoted with approval *Conley* v *Gibson* 355 U S 41, 2 L Ed 2d 80, 78 S Ct 99 (1957) wherein it is said:

> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *id.* U S 45-46

Using these guidelines this Court reversed the courts below and remanded the case for further proceedings. In so doing the Court rejected the District Court application of Eleventh Amendment protection at the stage of proceeding in that Court. In so doing this Court also rejected the Court of Appeals affirmance on the additional grounds of governmental immunity. As regards Eleventh Amendment protection for State officers, the Court observed that when a state officer acts under a state law in a manner violating the Federal Constitution:

> ". . . he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. . . . The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Scheuer* v *Rhodes, supra,* U S, 237 quoting from Ex Parte Young 209 U S 123, 52 L Ed 714, 28 S Ct 441 (1908)

As regards governmental immunity this Court in *Scheuer*, *supra*, reviewed the genesis of the doctrine and held it had no application at the stage of proceedings before the Court; that such immunities were qualified, that its availability was a fact question and that it could not override the paramount authority of the Federal Constitution.

The relevance of citation of Eleventh Amendment cases in the present matter is that the analysis of the courts in defining the scope of protection given individuals claiming a derivative protection thereunder when sued for violation of federal rights in general is based upon the same principles as are applied in analysis of governmental immunity protections allowed in civil rights cases against "persons" or individuals.

Simply put, "persons" cannot be clothed with immunity by reason of acting under the "color" of State law. That is the essence of 42 USC 1983. It is also stated that persons operating under the color of State law are liable in an "action at law" for depriving another of federal rights while so operating. Gargantuan efforts have been made to avoid plain words, principally under immunity arguments.

The attempted distinction between jurisdiction over equity actions and actions at law made in the Circuit Court in this case (App. C p. 5a., App. E p. 30a.) is not new. But, it was rejected some time ago by this Court. *Meyers* v *Anderson*, 238 US 368, 59 L Ed 1348, 35 S Ct 473 (1915), holding that *Ex Parte Young*, *supra*, applied in damage actions.

To have a basis for asserting that the law of governmental immunity deprives the courts of general jurisdiction in the State of Michigan of subject matter jurisdiction over matters alleged in the Complaint (App. D p. 7a.) it must be posited by the Courts below that:

1. Circuit Courts in Michigan (the courts of general original jurisdiction) have no jurisdiction over the State or State associated persons in actions at law for damages because of governmental immunity.

2. The State has waived for itself (and associated persons) this immunity (in this case subject matter immunity) only to the extent that claims for damages can be made in the Court of Claims of the State of Michigan.

3. These rules (1 and 2) prevail regardless of whether a federally guaranteed or granted right, privilege or immunity is asserted if a State associated person is sued in an action at law for damages.

4. No state of facts provable under the allegations of a Complaint can avoid these propositions.

Decision in this case should not be encumbered by the fact that the State was a named party. The Michigan Court Rules of 1963 (GCR 1963) provide for accelerated judgment where the court lacks jurisdiction of the subject matter over a person or property. The question as to subject matter jurisdiction was raised prior to a responsive pleading and judgment for lack of subject matter jurisdiction was granted. (See GCR 1963 116)

If the four propositions represent Michigan law they unconstitutionally deprive Appellants of due process and of their rights under 42 USC §1983 and §1986.

There is no doubt that congress has the right and has, as a matter of law, made federal rights enforceable in State Courts. *Texta* v *Kutt*, (1949) 330 U S 386, 91 L Ed 867, 67 S Ct 810.

It has been said:

> ". . . a state court could not refuse to enforce a claim under the Civil Rights Act." *International Prisoner's Union* v *Rizzo*, 356 F Supp 806 (E D Pa 1973)

This Court has held that 42 USC 1983 actions may be brought in State Courts. *Martinez* v *California* 444 U S 277, 62 L Ed 481, 100 S Ct 553 (1980) reh den, 445 U S 920, 63 L Ed 2d 606, 100 S Ct 252; holding conduct violating 42 USC §1983 and §1985(3) cannot be immunized under State

law; *Monell* v *Department of Social Services*, 436 U S 658. 56 L Ed 2d 611, 98 S Ct 2018 (1978); *Maine* v *Thiboutot* 448 U S 1, 65 L Ed 2d 555, 101 S Ct 250, (1980).

State courts have held themselves to have §1983 jurisdiction. *Niever* v *New York City Transit Authority*, 91 Misc 2d 214, 397 NYS 2d 531 (1977); *T & M Homes Inc.* v *Mansfield* 162 NJ Super 497. 393 A 2d 613, *Riedy* v *Sperry*, 83 Wis 2d 158, 265 NW 2d 674 (1978).

Michigan courts have entertained federal civil rights cases. *Armstrong* v *Ross Township*, 82 Mich App 77, 266 NW 2d 674 (1978); *Hirych* v *State*, 376 Mich 384, 136 NW 2d 910 (1965).

There is nothing in federal civil rights law that permits the distinction between legal and equitable actions made in this case by the courts of Michigan. In *Meyers* v *Anderson*, 238 U S 368, 59 L Ed 1349, 35 S Ct 432 (1915) it was held that damages were recoverable in actions based on violations of civil rights.

The "courts of law" have been liberal in granting actual damages under a variety of cases involving civil rights actions; including unreasonable searches and seizures; *Sexton* v *Gribbs*, 327 Fed Supp 134, affd 446 F 2d 904, cert den 404 U S 1062, 30 L Ed 751, 92 S Ct 733; emotional distress, embarassment and humiliation without proof of intent, *Mairon* v *Igleburger*, 584 F2d 767 (6th Cir 1978). cert den. U S, 59 L Ed 2d 78, 99 S Ct 1027. The rule as to whether Federal or State law on damages applies in §1983 actions has been stated as follows:

> "We believe that the benefits of the (Civil Rights) Acts were intended to be uniform throughout the United States, that the protection to the individual afforded by them was not intended by congress to differ from state to state, and that the amount of damages to be recovered by the injured individual was not to vary because of the law of the state in which the federal court suit

was brought. Federal common law must be applied to effect uniformity otherwise the Civil Rights Acts would fail to effect the purpose and ends which congress intended." *Batista* v *Weir*, 340 F 2d 74 (5th Cir 1965)

Following language appearing in *Sullivan* v *Little Hunting Park, Inc.* 396 U S 229, 240 L Ed 2d 386, 90 S Ct 400 (1969), a 42 USC §1983 case, it has been said that the correct rule in §1983 cases is that both state and federal rules on damages may be utilized, whichever better serves the policies of federal statutes. *Baskin* v *Parker*, 588 F 2d 965 (5th Cir 1979)

Nominal and punitive damages are also allowed, *Batista* v *Weir*, supra, especially where malice is involved, *Wade* v *Haynes*, 663 F 2d 778 (5th Cir. 1981), and even where they would normally not be allowed under state law. *Garrick* v *Denver*, 658 F 2d 1021 (5th Cir. 1981)

As far as Appellants can ascertain it is the general rule that absolute immunity from civil rights action is accorded legislators or others when acting as such and to the judiciary.

The individuals here involved are not alleged to be acting as either.

Any other immunities would be qualified and must be subject to factual determinations.

Merely giving a "person" title or description that associates him with the State does not immunize him from wrongful acts which violate an individual's federal rights under "color" of state law. To accept the ruling to the contrary, as held by the Michigan courts, is to preclude the violated person from a remedy in the State courts.

In summation, the Michigan courts, in this case, have said the damage action against individuals must be brought in the Court of Claims. The Legislature has said the Court

of Claims does not have jurisdiction if there is an adequate remedy in the Federal courts (MCL 600.6440). It is clear that there would be jurisdiction in the federal courts. (42 USC §1983, 28 USC §1343).

Ergo, there is no original jurisdiction in civil rights litigation involving damage claims against state associated individuals.

We submit this is not the result in any other jurisdiction and should not be in Michigan.

The posited intermediate conclusions necessary to reach the result obtained in the Courts below and the result itself are contrary to that of those reached in all other jurisdictions.

This is probably due to the chaos existing in the law of the State of Michigan regarding governmental immunity which has been described as follows:

> " . . . a legislative badminton game with governmental immunity as the shuttlecock." *Pichette* v *Manistique Pub. Schools*, 50 Mich App 770, 213 NW 2d 784 (1973)

The history of governmental immunity law in Michigan requires reversal here to obtain some recognition by Michigan of what it can and cannot do in regard to civil rights litigants' access to its courts.

Otherwise the quagmire that has long plagued the law will continue.

In 1961 the Supreme Court of Michigan declared that the unjust doctrine of governmental immunity no longer existed in Michigan. *Willams* v *City of Detroit*, 364 Mich 231, NW 2d (1961). Six months later Williams, supra, was limited to municipal corporations. *McDowell* v *State Highway Commission*, 365 Mich 268 NW2d (1961).

Between then and now no semblance or order has emerged. See, The Court and Governmental Tort Liability

in Michigan, 72 Mich Law Rev. 187 (1973); Governmental Immunity After Parker and Perry: The King Can Do Some Wrong, Vol. 1982 Detroit College of Law Review, Issue 1, p.1. The authors of those articles correctly state that two acts of the Legislature (Act No. 170, Mich Pub Acts, 1964 MCL §691.1401 and Act No. 155, 1970, MCL §691.1401, as amended) have not helped.

Dissenting opinions have become the basis of majority opinions. (Compare: *Thomas* v *State Department of Highways*, 398 Mich 1, 247 NW2d 530 (1976) and *Parker* v *City of Highland Park*, 404 Mich 183, 273 NW2d 521 (1978).

No clear pattern has emerged as regards any derivative immunity to be accorded state associated persons. (Compare: *Bush* v. *Oscoda Area* 405 Mich 716, 275 NW 2d 521 (1979) and *Lockaby* v *Wayne County*, 406 Mich 65, 276 NW 2d 1 (1979).

The considerable confusion that exists and certainly inhibits any thought of using Michigan Courts for civil rights litigation is illustrated by *Bandfield* v *Wood*, 104 Mich App 279, (1981) The action was originally brought in the Court of Claims and dismissed on the motion of the Attorney General of the State of Michigan on the ground that plaintiff was suing defendants in their individual capacities. When brought in the Circuit Court (having the same subject matter jurisdiction as the Circuit Court for the County of Wayne) the Attorney General moved to dismiss on the ground that Wood was a "State Official". Wood was a "supervisor" at a state prison. The Court of Appeals affirmed the lower court's dismissal of the motion, holding that Wood was not a "State Official".

What the Michigan cases amount to is a question, not an answer.

The Court of Appeals believes that state associated persons can not be sued in the Circuit Courts if they are "State Officials" but may be sued in the Circuit courts if they are not. The Attorney General takes the position in the

case here appealed that the individual defendants can be sued only in the Court of Claims based on their nominal status as state officials, not withstanding the fact that no judicial determination of their actual capacity has been made.

Whatever the test of immunity for state causes of action is at present, it is clear that Michigan Courts are out of line with the federal courts and other state courts, as regards subject matter jurisdiction over civil rights litigation and the effect that state immunities may have.

QUESTION II IS SUBSTANTIAL

The Orders of the Michigan Courts were not based upon jury trial issues.

However, the effect of the actions of the Courts below denied Appellants a jury trial.

The argument is simple. At the time of the adoption of the Michigan Constitution (1871) there could be no action against the sovereign or its agents, therefore there was no jury trial. On this premise it is maintained that statutory or common law refinements of the doctrine of governmental immunities do not affect the right to jury trial.

Ordinarily logic requires re-examination of the conclusion when a premise is changed.

In *Curtis* v. *Loetker* (1974) 514 US 189, 39 L Ed 2d 260, 94 S Ct. 1005 this Court considered the question of whether a jury trial was required by the Seventh Amendment to the Constitution of the United States in an action under the Civil Rights Act of 1968 (42 USC §3612). Obviously such actions did not exist at the time of the adoption of the Constitution of the United States.

This Court rejected the concept that jury trial rights extended only to common law forms of action and held they were guaranteed as to new causes of action created by Congress enforceable in an Action for damages in the "ordinary courts of law".

This is so if the parallel court systems (State and Federal) are to operate consistantly and uniformly where subject matter is the same and where federal rights are involved. If the argument is made that immunities exist to protect the public treasury and this is better done in Michigan Courts without juries, the argument must be that juries in Federal Courts are not prolifigate with public monies but state juries are. That is hardly supportable in theory or in fact.

It makes little sense to adhere to the Common Law form of action at a point in history argument where an action is obviously one for damages at law. To do so prevents jury trials of jury type cases when the original reason has changed. Judicial notice can be taken of the fact that the scope and extent of governmental immunity has changed. "Persons" historically not subject to suit now are. Their freedom from jury trial was not a sine qua non of their not being subject to such trials, only a by-product and derivative.

Logic demands that when the premise disappears so does the conclusion.

A new sylogism is needed. Jury trials are accorded where demanded in actions at law for damages. Civil Rights actions may be actions at law for damages. Where Civil Rights actions are at law for damages, a jury trial is available upon demand.

CONCLUSION

Probable Jurisdiction of the Appeal should be noted, or in the alternative, this Appeal treated as an Application for a Writ of Certiorari under 38 USC §1252.

Respectfully submitted,
John C. Carlisle
George E. Brumbaugh, Jr.
Attorneys for Appellants
18038 Mack Ave.
Grosse Pointe, Mi. 48224
(313) 884-1234

ON APPEAL FROM THE
SUPREME COURT OF MICHIGAN

APPELLANTS' APPENDIX

ORDER OF SUPREME COURT (APPENDIX A)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 20th day of April in the year of our Lord one thousand nine hundred and eighty-three.

Present the Honorable
G. MENNEN WILLIAMS,
Chief Justice
THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
Associate Justices.

69738

STUART R. CRANE and BARBARA J. CRANE, his wife, jointly and severally,
Plaintiffs-Appellants,

v

STATE OF MICHIGAN, SYDNEY GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, and UNKNOWN OFFICERS, jointly and severally,
Defendants-Appellees.

SC: 69738
COA: 56572
LC: 81-106368-CZ

On order of the Court, the application *in propriis personis* for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

0412

STATE OF MICHIGAN—ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 20th day of April in the year of our Lord one thousand nine hundred and eighty-three.

[SEAL]

(s) Jacqueline B. MacKinnon
Deputy Clerk

ORDER OF COURT OF APPEALS (APPENDIX B)

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Grand Rapids, on the 11th day of June in the year of our Lord one thousand nine hundred and eighty two.

Present the Honorable
Robert B. Burns
Presiding Judge
Thomas M. Burns
Glenn S. Allen, Jr.
Judges

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,
Plaintiffs-Appellants,

-v-

Docket No. 56572
L.C. No. 81-106368-CZ

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS and UNKNOWN OFFICIALS, Jointly and Severally,
Defendants-Appellees.

In this cause plaintiffs-appellants have filed a brief on the merits in support of their appeal and the defendants-appellees having filed a motion to affirm pursuant to GCR 1963, 817.5(3), and a brief in support of the motion and a brief on appeal and an answer in opposition thereto being filed, and due consideration thereof being had by the Court,

IT IS ORDERED that the motion to affirm be, and the same is hereby GRANTED, the Court determining that the questions raised by the plaintiffs-appellants are so unsubstantial as to need no argument or formal submission and are without merit.

Order of Court of Appeals (Appendix B)

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 18th day of June in the year of our Lord one thousand nine hundred and eighty-two.

(s) Ronald L. Dzierbicki
Clerk

ORDER OF CIRCUIT COURT (APPENDIX C)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,

Plaintiffs,

-v-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS AND UNKNOWN OFFICERS, Jointly and Severally,

Defendants.

Case No. 81-106368-CZ

Hon. Thomas Roumell (P-19702)

ORDER OF ACCELERATED JUDGMENT

At a session of the Court, held in the Old City County Building, City of Detroit, County of Wayne, State of Michigan, on March 6, 1981

PRESENT: Hon. Thomas Roumell
Circuit Judge

This matter having come on to be heard by the Motion of the Defendant State of Michigan, Department of Treasury for Accelerated Judgment pursuant to GCR 1963, 116.1(2) asserting that this Court lacks subject matter jurisdiction, and this Court being otherwise duly informed and advised in the premises;

NOW THEREFORE IT IS ORDERED, this Court finds and determines that it lacks subject matter jurisdiction to entertain the Complaint, and pursuant to GCR 1963, 116.1(2) grants Accelerated Judgment in favor of Defendant State of Michigan and all individual Defendants and dismisses the within Complaint.

(s) Thomas Roumell
Circuit Judge

COMPLAINT (APPENDIX D)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,

Plaintiffs,

-vs- Case No. _____

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS and UNKNOWN OFFICERS, Jointly and Severally,

Defendants.

COMPLAINT
and
DEMAND FOR JURY TRIAL

There is now on file in this Court a civil action arising out of the same transaction or occurrence as alleged in the Complaint. The action is pending and is No. 81-100579-CZ. The action was assigned to Judge Thomas Roumell (P-19702).

Stuart R. Crane
189 Cloverly Road
Grosse Pointe Farms,
Michigan 48236
Ph. 313-885-6021

Dated: February 12, 1981

Complaint (Appendix D)

COMPLAINT

NOW come the Plaintiffs in the above captioned action, STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly, and make this their Complaint against the within named Defendants and state as follows:

1. That Plaintiffs STUART R. CRANE and BARBARA J. CRANE, his wife, are residents of Wayne County, Michigan.

2. That Defendant STATE OF MICHIGAN (hereinafter referred to as "STATE") is the governmental body which employed the other Defendants.

3. That Defendant SYDNEY D. GOODMAN (hereinafter referred to as "GOODMAN") at all times pertinent herein was employed by Defendant STATE as Revenue Commissioner.

4. That Defendant HARRY W. JURY (hereinafter referred to as "JURY") at all times pertinent herein was employed by Defendant STATE as Deputy Commissioner.

5. That Defendant JOSEPH B. FAREMOUTH (hereinafter referred to as "FAREMOUTH") at all times pertinent herein was employed by Defendant STATE as District Manager.

6. That Defendant PAUL BRICKER (hereinafter referred to as "BRICKER") at all times pertinent herein was employed by Defendant STATE as Assistant Attorney General.

7. That Defendant DALE E. SMITH (hereinafter referred to as "SMITH") at all times pertinent herein was employed by Defendant STATE as Crime Investigator.

8. That Defendants CLAUDIA JOSEPH (hereinafter referred to as "JOSEPH"), CASMERE WOJNO (hereinafter referred to as "WOJNO") and UNKNOWN AGENTS at all times pertinent herein were employed by Defendant STATE as Agents.

9. That Defendants PERSONS UNKNOWN at all times pertinent herein were employed by Defendant STATE.

10. That Defendants DOUGLAS L. ROSE (hereinafter referred to as "ROSE") and UNKOWN OFFICERS at all times pertinent herein were employed by Defendant STATE as Peace Officers.

11. Jurisdiction founded on the existence of a Federal question and amount in controversy, as this action arises under the 1st, 4th, 5th, 8th, 13th and 14th Amendments to the Constitution of the United States as hereinafter more fully appears, and the amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

12. That Plaintiffs reserve the right to amend this their Complaint upon Discovery.

COUNT I

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations as though fully set forth below.

2. That on December 9, 1980, a jeopardy assessment (see exhibit "A") was issued by Defendant PERSONS UNKNOWN against Plaintiffs and a multiplicity of other individuals and entities therein named.

3. That said jeopardy assessment was and is based upon speculation and premature conclusions.

4. That said jeopardy assessment fails to state a material claim upon which relief could be had.

5. That said jeopardy assessment by including a 100% penalty for "fraudulent intent to evade tax" falsely imputed and accused Plaintiffs with intent to commit a crime, ss; tax evasion.

6. That said jeopardy assessment as it falls upon Plaintiff is unnecessary, unwarranted, unconstitutional and denies due process without reason.

7. That Defendant STATE is not entitled to such unjust equitable process as it has failed to exhaust its remedies at law.

8. That aforesaid acts were intentional, malicious and contrary to law.

9. That contrary to law, said jeopardy assessment identifies with Plaintiffs previously held confidential social security numbers.

10. That Defendants PERSONS UNKNOWN, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

11. That as a direct result of the aforesaid acts and deeds by Defendant PERSONS UNKNOWN, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, breach of privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their names and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants PERSONS UNKNOWN, Jointly and Severally, for whatever amount Plaintiffs are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Complaint (Appendix D)

COUNT II

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I as though fully set forth below.

2. That on December 9 and 10, 1980, alleged warrants (see exhibits "B" and "C") were issued by Defendants JURY and FAREMOUTH against Plaintiffs and other entities therein named.

3. That said alleged warrants falsely declare that Plaintiffs have had due and proper notice of assessment and demand therefore.

4. That said alleged warrants falsely impute a crime against Plaintiffs, ss; tax evasion.

5. That contrary to law, said tax warrant identifies with Plaintiffs previously confidentially hald social security numbers.

6. That said alleged warrants are unnecessary, unwarranted, unconstitutional and deny due process without reason.

7. That said acts and deeds were intentional, malicious, wrongful, unjustified, contrary to law, breach of privacy, breach of contract, constitute fraud, malfeasance and libel per se.

8. That Defendants JURY and FAREMOUTH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

9. That as a direct result of the aforesaid acts and deeds by Defendants JURY and FAREMOUTH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and

trauma, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking four million dollars in ordinary damages and four million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants JURY and FAREMOUTH, Jointly and Severally, for whatever amount Plaintiffs are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

COUNT III

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II as though fully set forth below.

2. That on December 10, 1980, various alleged tax liens (see exhibit "D" and "E") were drafted by Defendant GOODMAN and issued by Defendant JURY against Plaintiffs.

3. That above mentioned alleged tax liens falsely declare that taxes, which after demand for payment thereof, remain unpaid.

4. That upon information and belief said alleged tax liens were filed in order to compel Plaintiffs into being merchants in equity and force them into perpetual involuntary servitude.

5. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law, constitute fraud, breach of privacy, libel per se, malfeasance and abuse of process.

6. That Defendants GOODMAN and JURY, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

7. That as a direct result of the aforesaid acts and deeds by Defendants GOODMAN and JURY, Plaintiffs reputations have been greatly injured, Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking four million dollars in ordinary damages and four million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN and JURY, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

COUNT IV

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III as though fully set forth below.

2. That on December 9, 1980, Defendant SMITH did sign and verify an affidavit (see exhibit "F") for the purpose of obtaining a warrant to search Plaintiffs home and there seize property and documents therein specified.

3. That said affidavit is insufficient to justify issuance of a search warrant.

4. That contrary to law, said affidavit identifies with Plaintiffs previously confidentially held social security numbers.

5. That Defendant SMITH willfully, wrongfully and with malicious intent disclosed only selected facts and wrongfully withheld material evidence from said affidavit in order to make it appear that a crime may have been committed by Plaintiffs.

6. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

7. That Defendant SMITH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within his power to so do.

8. That as a direct result of the aforesaid acts and deeds by Defendant SMITH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking one million dollars in ordinary damages and one million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant SMITH for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Complaint (Appendix D)

COUNT V

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV as though fully set forth below.

2. That on December 9, 1980, Defendant SMITH wrongfully caused to be issued an alleged search warrant (see exhibit "G") by the Honorable Robert H. Pytell, for the Municipal Court, Grosse Pointe Farms, Wayne County, Michigan, directing "THE SHERIFF OR ANY PEACE OFFICER" of Wayne County to search Plaintiffs residence located at 189 Cloverly Road, Grosse Pointe Farms, Wayne County, "and do there seize, tabulate and make return thereof according to law" various books, records and documents therein specified.

3. That said alleged warrant under authority of which they claimed to have acted is insufficient in law to justify a search and seizure of the property therein described.

4. That said alleged warrant is unreasonable, impermissibly broad and unconstitutionally general in nature.

5. That said alleged warrant was fraudulently obtained in that there was no evidence of a crime, no probable cause to believe a crime had been committed or that Plaintiff had committed a crime, only speculation and premature conclusions.

6. That said warrant is unwarranted, unnecessary and contrary to law in this matter being on its face nothing more than a "fishing expedition".

7. That the determination of tax liability and the recovery of taxes are civil matters and the use of a criminal search warrant constitutes an abuse of process of said Court.

8. That the records and documents sought by said alleged warrant are privileged from seizure, thus rendering said alleged warrant helpless.

9. That contrary to law, said search warrant identifies with Plaintiffs a previously confidentially held social security number.

10. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

11. That Defendant SMITH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

12. That as a direct result of the aforesaid acts and deeds by Defendant SMITH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking five million dollars in ordinary damages and five million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant SMITH for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and for such other and further relief as this Court may be empowered to grant.

COUNT VI

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and parag-

raphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V as though fully set forth below.

2. That Defendant ROSE was the Peace Officer in charge of and responsible for executing said alleged warrant.

3. That at or about 11:00 a.m. on December 10, 1980, Defendant ROSE and UNKNOWN OFFICERS, under the alleged authority of said alleged warrant, with evil intent and purpose, forceably and without Plaintiffs consent, entered Plaintiffs residence.

4. That Defendant ROSE then did allow, permit, encourage and/or authorize, without Plaintiffs consent, without authority and contrary to law, Defendants BRICKER, JOSEPH, WOJNO and UNKNOWN AGENTS to criminally trespass within Plaintiffs home.

5. That Defendants BRICKER, JOSEPH, WOJNO and UNKNOWN AGENTS did with evil intent, without Plaintiffs consent, unlawfully enter Plaintiffs residence, committing criminal trespass.

6. That Defendant ROSE failed to execute alleged search warrant as ordered by said Court.

7. That Defendant ROSE permitted and condoned an illegal, unwarranted and unlawful search by Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS of Plaintiffs residence.

8. That Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS did search Plaintiffs residence and without apparent purpose or direction, indiscriminately seized property, records and documents owned by Plaintiffs and other individuals and entities not named in or parties to said alleged warrant.

9. That Defendant SMITH is required by law to accompany peace officers for the sole purpose of identifying items

seized as being the item used in the commission of the alleged crime, but did in fact unlawfully search and seize.

10. That Defendant ROSE failed to make a complete and accurate tabulation of the property and things seized as required by law and order of said Court.

11. That Defendant ROSE unlawfully permitted Defendant JOSEPH to record and list on the return to search warrant (see exhibit "H") the items seized by Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS.

12. That Defendant ROSE did unlawfully and without cause, allow and permit Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS to seize an automobile, monies, gold coins, silver coins, silver bullion, tape recordings, titles of vehicle ownership, copies of current civil litigation, thus placing Plaintiff in danger of default judgments, personal correspondence, pistols, indentures of trust, minutes of various trust meeting agreements, personal address books, contracts, books, newsletters, miscellaneous publications, various and sundry office supplies, and numerous other items unknown to Plaintiffs, all which were not duly and properly recorded on the Return to Service; said actions being contrary to law and order of said Court.

13. That the seized property is or may be in de facto possession of Defendant STATE.

14. That virtually all of said items seized by Defendants BRICKER, SMITH, JOSEPH, WOJNO and UNKNOWN AGENTS are far beyond the scope of alleged warrant.

15. That Plaintiffs were not permitted to confirm inventory or otherwise verify what items had in fact been seized.

16. That Defendants BRICKER, ROSE, SMITH, UNKNOWN AGENTS and UNKNOWN OFFICERS did refuse Plaintiffs lawful request for the names of the Defendant UNKNOWN AGENTS and UNKNOWN OFFICERS.

17. That by virtue of the aforementioned execution of said warrant and the return thereto was and is grossly incomplete, inaccurate and by virtue of Defendant ROSE signing same, said return to search warrant was falsely attested to and certified, said acts being contrary to the order of said Court.

18. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

19. That Defendants BRICKER, SMITH, WOJNO, JOSEPH, ROSE and UNKNOWN OFFICERS, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

20. That as a direct result of the aforesaid acts and deeds by Defendants BRICKER, SMITH, JOSEPH, WOJNO, ROSE, UNKNOWN AGENTS and UNKNOWN OFFICERS, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous and mental anguish and trauma, invasion of their privacy, illegal seizure of their peroperty, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking five million dollars in ordinary damages and five million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and order Defendant STATE to return any property they possess to the place where it was seized, and for such other and further relief as this Court may be empowered to grant.

COUNT VII

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI as though fully set forth below.

2. That at or about 7:30 p.m. on December 10, 1980, after Defendants ROSE and UNKNOWN OFFICERS and Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS had left the premises of 189 Cloverly Road, Grosse Pointe Farms, Wayne County, having completed an alleged execution of an alleged search warrant upon said premises, said search warrant being void thereby, an UNKNOWN AGENT arrived, did enter without Plaintiffs permission or consent said premises and did thereupon illegally seize a large pasteboard box containing unidentified records, papers and documents owned by Plaintiffs and other individuals and entities.

3. That the seized property is or may be in the de facto possession of Defendant STATE.

4. That said seizure by Defendant UNKNOWN AGENT aforementioned was intentional, malicious, wrongful, unjustified and contrary to law.

5. That as a direct and forseeable result of said illegal seizure Plaintiffs were denied of their above mentioned civil and common law rights. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants STATE and UNKNOWN AGENTS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and order Defendant STATE to return any property they possess to the place where it was seized, and for such other and further relief as this Court may be empowered to grant.

COUNT VIII

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI and paragraphs 1-5 of Count VII as though fully set forth below.

2. That this Court is brought and arises under 42 U.S.C. 1983 and that this Honorable Court has jurisdiction to hear such claims.

3. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS upon assuming their offices took an oath to uphold the Constitution of The United States and the State of Michigan.

4. That it then became the duty of said Defendants to preserve, protect and defend the civil and common law rights of Plaintiffs as guaranteed by law and said Constitutions.

5. That disregarding said sacred trust and duty Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS at all times and all places mentioned in the Common

Allegations and Counts I-VII of this Complaint, did maliciously, intentionally, and unlawfully conspire to deprive Plaintiffs of their civil and common law rights as enumerated therein.

6. That disregarding said sacred trust and duty, Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS at all times and all places mentioned in the Common Allegations and Counts I-VII of this Complaint did maliciously, intentionally and unlawfully subject and cause and/or allow Plaintiffs to be subjected to the deprivation of their rights as enumerated therein.

7. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE AND UNKNOWN OFFICERS, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

8. That as a direct and forseeable result of said conspiracy to deprive Plaintiffs of their above mentioned civil and common law rights, Plaintiffs have suffered the indignities enumerated in the Common Allegations and Counts I-VII of this Complaint. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and for such other and further relief as this Court may be empowered to grant.

COUNT IX

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI and paragraphs 1-5 of Count VII and paragraphs 1-8 of Count VIII as though fully set forth below.

2. That this Court is brought and arises under 42 U.S.C. 1986. That this Honorable Court has jurisdiction to hear such claims.

3. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS upon assuming their offices took an oath to uphold the Constitutions of The United States and the State of Michigan.

4. That it then became the duty of said Defendant to preserve, protect and defend the civil and common law rights of Plaintiff as guaranteed by law and said Constitutions.

5. That disregarding said sacred duty and trust Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ANDERSON and UNKNOWN OFFICERS at all times and all places mentioned in the

Common Allegations and Counts I-VIII of this Complaint did maliciously, intentionally and unlawfully, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

6. That as a direct and forseeable result of said willful negligence in the performance of their duties as proscribed by law Plaintiffs have suffered the indignities enumerated in the Common Allegations and Counts I-VIII of this Complaint. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Respectfully submitted,
(s) Stuart R. Crane, *Pro per*

(s) Barbara J. Crane, *his wife*

STATE OF MICHIGAN)
) ss VERIFICATION
COUNTY OF WAYNE)

I, Stuart R. Crane, being first duly sworn, deposes and says that I have read the foregoing Complaint and that the facts stated therein are true and correct to the best of my knowledge and belief.

(s) Stuart R. Crane, *pro per*

Subscribed and sworn to before me
this 12th day of February, 1981.

(s) ?
Notary Public

DEMAND FOR JURY TRIAL

Plaintiffs hereby make demand for a jury trial in the above entitled matter.

Respectfully submitted,
(s) Stuart R. Crane, *pro per*
189 Cloverly Road
Grosse Pointe Farms, Michigan
48236
Ph. 313-343-0099

Dated: February 12, 1981

(CIRCUIT COURT TRANSCRIPT OF MARCH 6, 1981) (APPENDIX E)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE,
BARBARA J. CRANE,
Plaintiffs,

VS #81-106-368-CZ

STATE OF MICHIGAN, SYDNEY D. GOODWIN, HARRY W. JURY, JOSEPH B. FAIRMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIAN JOSEPH, DOUGLAS L. ROSE,
Defendants.

REPORTER'S NOTICE OF FILING OF TRANSCRIPT

TO: STEPHEN DALLOS, *Deputy Clerk*
Court of Appeals
900 First Federal Building
Detroit, Michigan 48226

Mr. Stuart Crane
189 Cloverly
Grosse Pointe Farms, Michigan

Court of Appeals
Mr. Alan Broad
1200 6th Street
Detroit, Michigan 48226

PLEASE TAKE NOTICE, that I have this day filed in the Circuit Court in the above-entitled matter a true and correct transcript of the testimony taken at the trial thereof

in accordance with the order of appellant's attorney filed therein.

(s) Dolores Crabtree, CSR-2580
Court Reporter
Tappert Court Reporting Service, Inc.
1248 Free Press Building
Detroit, Michigan 48226
963-6448

Detroit, Michigan
Dated: 8-4-81

(2)

Detroit, Michigan
Friday, March 6, 1981

THE CLERK OF THE COURT: Crane versus State of Michigan, 81-106 368 CZ.

THE COURT: I recognize the parties and the action. What's different about what we had before?

MR. BROCKMAN: For the record, E. David Brockman, Attorney General, appearing on behalf of the State of Michigan and all of the individual defendants.

The Court's point is well taken. There is nothing different other than the matter that was dismissed by the Court on February 20th, which was another lawsuit filed in January. This lawsuit was filed in February, February the 13th. The point being, your Honor, that the lawsuit before the Court today is precisely the same that was before your Honor on the 20th of February. It arises out of the same transaction.

THE COURT: Mr. Brockman, may I ask you, this was filed in relation to the case that the Court acted on the last time?

MR. BROCKMAN: Exactly. It arises out of the same circumstance.

THE COURT: The filing date makes no difference?

(Circuit Court Transcript of March 6, 1981) (Appendix E)

(3)

MR. BROCKMAN: I think we have to treat it as a separate action, under the Court Rules. That's why we've moved for accelerated judgment.

THE COURT: You're arguing, I take it —

MR. BROCKMAN: The argument is the same. What I'm asking the Court to do today and I did not ask the Court to do on the 20th of February, is to grant to the State of Michigan and all of the individual defendants, the award of costs and attorney fees. Basing that request on the fact that after your Honor entered the order granting accelerated judgment on February 20th, we appeared before Judge Dingeman in conjunction with another matter on a motion for accelerated judgment, again, involving the same Plaintiffs, and within an hour after your Honor entered your order, Judge Dingeman also entered an order.

I, at that time, met with Mr. Crane and asked him if he would stipulate to a dismissal of all of the pending lawsuits at that time based on the fact that it was clear, at that point, at least I felt it was clear, that the Plaintiffs were in the wrong court. I informed Mr. Crane that should it be necessary for the State to bring another motion, we would most vigorously request the award of costs and attorney fees.

We gave Mr. Crane a week to advise (4) us as to whether or not he would voluntarily stipulate to a dismissal of not only this matter, but a matter pending before Judge Duggan in a matter pending in Macomb County. The answer was silence, and so we moved for a dismissal of this matter as well as the matter before Judge Duggan. Judge Duggan entered an order this morning dismissing his matter, and we are now before the Court asking not only for judgment of accelerated judgment, but award of costs and attorney fees because we feel it should have been abundantly clear that they were not in the proper court.

(Circuit Court Transcript of March 6, 1981) (Appendix E)

We are now being put to the task of having to come in here and prepare the related paper work and waste our time and the Court's time in asking for this order. I would ask the Court to enter an accelerated judgment here and award costs and reasonable attorney fees.

THE COURT: Mr. Crane?

MR. CRANE: First of all, your Honor, Mr. Brockman did ask me on the 20th if I would consider a dismissal and he said to let me know in one week's time.

Five days later, according to the date when they filed this motion, they did not wait one week. That's the first statement I'd like to make in answer to this.

Second, his statement is that this is essentially the same case. The Plaintiffs in the other case of the Estate of Beatrice M. Crane, of which I happen to (5) be one of her offspring, one of twelve children, and I did not bring that case. That case is a separate case. This is the case concerning the search and seizure of my home. The case in Macomb County, this is a case of the search and seizure of Mr. Wood's home, who is not a party to this case. His home was searched and seized on the same day, and he has brought a case in Macomb County. They have said that in each of these courts that I have filed five cases. This is not the case I am a party of three cases, one of which has to do with the Burgandy Hotel where the State ran up a $75,000.00 debt to me and didn't pay it, for Welfare people. They contracted for it and I am still not paid. This debt is in excess of four years old now. This is for the whole problem. They refused to pay me monies that were lawfully due me.

Anyway, the case before us here has only to do with the search and seizure of my home. It arises under the 4th Amendment, the 14th Amendment of the Constitution of the United States, therefore, it is a federal question, and this Court does have jurisdiction, and it arises under the Article 1, Section 11 and Article 1, Section 17 of the State Con-

stitution and Article 3, Section 2 of the Michigan State Constitution of 1963. It also arises under MCL 205.25.

THE COURT: What are you seeking as the ultimate; what are your prayers?

MR. CRANE: My prayer is for damages (6) against the individuals who violated my home and illegally conspired to do so. By the way, your Honor, when they came in—

THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim for damages.

You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out of the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.

Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we're at, sir.

You're very well versed. You understand exactly what's going on and you're representing yourself. You're not an attorney, and eminently qualified. You have done an outstanding job, in the Court's view, as an attorney, even though you're not. Therefore, I don't think the Court has taken advantage of you, and I certainly don't think Mr. Brockman has taken advantage of you.

The fact is—

(7)

MR. CRANE: These are constitutional questions that—

THE COURT: No, these are constitutional questions that can be answered within the realm and within the scope of the judgment that you seek in the Court of Claims. It

doesn't mean that they hear your claim there with shutters, with mental shutters. They will listen to all of it, what your contentions are, to decide whether or not you have a claim against the State. That's the place to go.

Now, I'm not going to assess any damages. I'm not going to assess any costs, and I'm not going to assess any attorney fees. The reason I'm doing it is because I think you and your family are properly concerned that you at least have somebody in some form to hear your claim. I don't think you're really—you're aggravated, I think. I think you're mad and unhappy, but that's neither here nor there. I think you're still entitled to have somebody hear your claim. I think you ought to go to the right place to have that done. The Court of Claims is the place to have that done.

MR. CRANE: Your Honor, I just found out yesterday by accident that they intend to sell my automobile next Tuesday. I have not been notified of any such sale. It is to be auctioned. I notice it's in the Court's advertisements, or somebody called me and told me, and while this is pending, because I do intend to appeal, I was wondering (8) if this is the proper time to ask for an injunction against the sale?

THE COURT: This is not the proper time, because this Court does not have that in this Complaint here, and I doubt whether or not this is—well, for an injunction, you would have to come into the Circuit Court of the jurisdiction of where the sale is going to be conducted.

MR. CRANE: They came into my private locked garage to get the car.

THE COURT: The accelerated judgment will be granted for the reasons stated on the record.

MR. BROCKMAN: Thank you, your Honor.

THE COURT: No costs.

(Circuit Court Transcript of March 6, 1981) (Appendix E)

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Dolores Crabtree, do hereby certify that I reported in stenotype the proceedings had in open court in the matter of Stuart R. Crane v State of Michigan, et al, Case No. 81-106 368 CZ, before the HONORABLE THOMAS ROUMELL, Circuit Court Judge, Detroit, Michigan, at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my direction and that the foregoing transcript is a full, true and correct transcription of my stenotype notes.

(s) Dolores Crabtree, CSR-2580
1248 Free Press Building
Detroit, Michigan 48226
963-6448

Office-Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-19

IN THE
SUPREME COURT OF THE
UNITED STATES

October Term 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MICHIGAN

MOTION TO DISMISS

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Louis J. Caruso
Solicitor General
Counsel of Record

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QUESTIONS PRESENTED

1. Whether Appellants may invoke the jurisdiction of this Court pursuant to 28 USC 1252, when the appeal neither arises from a judgment, decree or order of a federal court, nor involves the constitutionality of an Act of Congress and is not taken in conformity with statute and the Supreme Court Rules.

2. Whether the United States Supreme Court has jurisdiction over an appeal when the federal questions presented were not raised, preserved, nor passed upon, either expressly or implicitly, by any of the courts of the State of Michigan which considered Appellants' claims.

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No. 83-19

IN THE
SUPREME COURT OF THE
UNITED STATES

October Term 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees.

MOTION TO DISMISS

Appellees, pursuant to Rule 16, paragraphs 1(a) and 1(b) of the Rules of the Supreme Court of the United States, move this Honorable Court to dismiss the appeal herein for the reasons and on the grounds hereinafter set forth.

STATEMENT

This is an appeal from an Order of the Supreme Court of the State of Michigan, denying Appellants' Application for Leave to Appeal a Circuit Court order dismissing the complaint of the Plaintiffs-Appellants on the ground that the Circuit Court lacked subject matter jurisdiction. The facts underlying this appeal are as follows:

Stuart R. Crane of 189 Cloverly, Grosse Pointe Farms, owns

and operates three inner city motels known as the Pallister Motel, 7641 Woodward Detroit, McNichols Riviera Motel, 21350 McNichols, Detroit and Cavalier Motel, 12300 Woodward, Highland Park.

An analysis by Michigan Department of Treasury auditors of the financial statements of these motels revealed understatements of Michigan sales, use and withholding taxes. Additionally, certain of the motels had not secured sales or cigarette tax licenses, had not filed Single Business Tax returns for certain tax years, and Mr. Crane refused to become licensed and/or registered for use tax; all of which constituted criminal violations and also gave rise to a jeojardy tax assessment in the amount of two hundred fifty-five thousand, one hundred twenty-eight and 08/100 dollars ($255,128.08).[1]

Stuart R. Crane, in May of 1979, authored an "Affidavit" in response to a subpoena issued by the Michigan Revenue Commissioner. In that Affidavit, Mr. Crane set forth his reasoning for refusing to comply with the subpoena as follows:

> "The State of Michigan has no authority to compel your deponent to be a Merchant in Equity against his will . . ."

On or about December 8, 1980, search warrants were issued for the books and records of the motels including the 189 Cloverly address of Mr. Crane, and a tax levy was also served on the assets of Mr. Crane pursuant to the jeopardy assessment.

On December 10, 1980, the Michigan Department of Treas-

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[1]

The criminal violations of the Michigan tax laws are defined and made punishable pursuant to 1941 PA 122 §27 as added by 1980 PA 162 §1; MCL 205.27; MSA 7.657(27). Statutory authority for issuance of a jeopardy assessment is founded on 1941 PA 122 §26 as added by 1980 PA 162 §1; MCL 205.26; MSA 7.657(26).

ury caused to be issued a tax warrant and notice of levy upon Stuart R. Crane.[2]

On February 12, 1981, the plaintiff-appellants filed a nine-count claim against the State of Michigan and various state officials ostensibly grounded in the common-law torts of *inter alia*, defamation, invasion of privacy and trespass, including a count alleging a 42 USC 1983 deprivation of their civil rights. This was the fourth of eleven lawsuits filed by Mr. Crane or his associates against the state arising from the execution of the search warrant and the state's issuance of the tax warrants.

On February 25, 1981, defendant-appellees filed a Motion for Accelerated Judgment based upon the ground that the Wayne County Circuit Court was without subject matter jurisdiction. Judge Thomas Roumell granted defendant-appellees motion on March 6, 1981. Plaintiffs-Appellants filed a Claim of Appeal in the Michigan Court of Appeals on March 9, 1981.

On November 3, 1981, defendants-appellees filed a Motion to Affirm on the ground that it was manifest that the question to be reviewed—whether the Circuit Court had subject matter jurisdiction over the plaintiffs-appellants' claim—was so unsubstantial as to need no argument or formal submission.

On June 11, 1982, the Court of Appeals entered an Order granting defendants-appellees' Motion to Affirm, the Court determining that the questions raised by the plaintiffs-appellants were so unsubstantial as to need no argument or formal submission and were without merit.

On or about June 28, 1982, plaintiffs-appellants filed an

---

[2]

Statutory authority for issuance of a tax warrant and notice of levy is founded on 1941 PA 122 §25, as added by 1980 PA 162 §1; MCL 205.25; MSA 7.657(25).

Application for Leave to Appeal from the Court of Appeals' Order Granting defendants-appellees' Motion to Affirm. Said Application was denied by Order of the Michigan Supreme Court on April 20, 1983.

ARGUMENT

I.

APPELLANTS' APPEAL FROM AN ORDER OF THE MICHIGAN SUPREME COURT IS DEFECTIVE IN THAT 28 USC 1252 DOES NOT CONFER JURISDICTION UPON THIS COURT AND THE APPEAL IS NOT TAKEN IN CONFORMITY WITH STATUTE AND THE SUPREME COURT RULES.

Appellants seek review from an Order of the Supreme Court of the State of Michigan, but invoke the jurisdiction of this Court pursuant to 28 USC 1252. (Appellants' Jurisdictional Statement, page 2) Said statute provides as follows:

> "Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party."

The term "court of the United States" is defined in 28 USC 451. Said statute provides:

> "The term 'court of the United States' includes the Su-

> preme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title [28 USCS §§ 81 et seq], including the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court and any court created by Act of Congress the judges of which are entitled to hold office during good behavior."

Thus, jurisdiction invoked pursuant to 28 USC 1252 is limited to courts under Article III of the United States Constitution and certain federal courts created by Congress, and does not include the various state courts. See, *Shaw* v *Garrison*, (1975, D C La) 391 F Supp 1353; *Cartolano* v *Tyrrell*, (1976, D C Ill) 421 F Supp 526.

Further, this appeal does not involve the constitutionality of an Act of Congress. The Supreme Court of the State of Michigan has merely affirmed the ruling of the circuit court that a claim for money damages against the state or its officers must be brought in the proper forum. The courts of the State of Michigan which have considered this cause have never ruled, either expressly or implicitly, that an Act of Congress is unconstitutional. Indeed, the question of the constitutionality of any Act of Congress has never even been raised in any of the courts below.

> "[It] . . . is only when the constitutionality of a law of the United States is drawn into question, not incidentally, but necessarily and directly, that jurisdiction of the United States Supreme Court can be involved." *Ansbro* v *United States*, 159 US 695; 16 S Ct 187; 40 L Ed 310 (1895).

Accordingly, the jurisdiction of this Court cannot be invoked pursuant to 28 USC 1252 because the appeal is not taken in conformity therewith.

Even assuming jurisdiction was properly invoked pursuant

to 28 USC 1252, Appellants' failure to submit a notice of appeal within the time prescribed by 28 USC 2101(a) and Supreme Court Rules 11 and 12 would compel dismissal of the appeal.

The Order of the Supreme Court of the State of Michigan which denied Appellants' application for leave to appeal was entered on April 20, 1983. Appellants filed their Notice of Appeal with this Court on July 8, 1983—79 days after entry of the Order.

Supreme Court Rule 11.2 requires that a notice of appeal is to be "filed with the clerk of the appropriate court within the time allowed by law for taking such appeal and the case is [to be] docketed within the time provided in Rule 12".

28 USC 2101(a) prescribes the time within which an appeal pursuant to 28 USC 1252 must be taken. Said statute states in relevant part:

> "(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title [28 USCS §§ 1252, 1253, 2282], holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court."

A motion to dismiss an appeal may be granted when based upon a failure to comply with the time requirements of the Supreme Court Rules. *Shapiro* v *Doe*, 396 US 488, 90 S Ct 641, 24 L Ed 2d 677, *reh den* 397 US 970, 90 S Ct 991, 25 L Ed 29 264 (1970). *Taggert* v *New York*, 392 US 667; 88 S Ct 2317; 20 L Ed 2d 1360 (1968).

In *Doe, supra,* the United States Supreme Court dismissed the appeal because the case had not been docketed until two days after the prescribed time for docketing had run. In the case at bar, the defect is much more serious. Not only is the filing of the notice of appeal 49 days late, but the appeal is clearly based upon the wrong jurisdictional statute.

In the recent case of *Donovan* v *Richland County Association for Retarded Citizens,* 454 US 389; 102 S Ct 713; 70 L Ed 2d 570 (1982), a county association for retarded citizens brought an action in the United States District Court for the District of Montana, seeking a declaratory judgment that the Fair Labor Standards Act did not apply to employees of a mental health facility operated by the association, or, in the alternative, that an application of the Act to the facility would be unconstitutional. The District Court held that the Act was unconstitutional as applied to the association in its operation of the facility.

The Secretary of Labor appealed to the Court of Appeals pursuant to 28 USC 1291 which provides that: "[t]he courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court." The United States Court of Appeals for the Ninth Circuit affirmed.

On appeal, the United States Supreme Court vacated the judgment of the Court of Appeals and dismissed the appeal. Specifically, the Supreme Court ruled that a direct appeal should have been brought pursuant to 28 USC 1252 and concommitantly, the Court of Appeals should have been precluded from ever taking jurisdiction.

More significantly to the case at bar, however, the Supreme Court ruled further that any additional relief was foreclosed

because an appeal which should have been taken pursuant to 28 USC 1252 must be taken in conformity with 28 USC 2101(a). Thus, because 28 USC 2101(a) prescribed that a section 1252 appeal must be taken within thirty days, the appeal to the Supreme Court could not be entertained. The Supreme Court ruled that the right to a timely and proper appeal had lapsed and expressly refused to remand the case to the District Court for entry of a fresh decree from which a timely appeal could commence.

In the case at bar, the only relevant jurisdictional statute upon which Appellants could have based their appeal was 28 USC 1257. *Donovan, supra,* however, forecloses Appellants' appeal at this time because the requisite time to properly appeal under 28 USC 1257, being ninety days, has also expired.

Supreme Court Rule 16.1(a) states as follows:

> "(a) The Court will receive a motion to dismiss an appeal on the ground that the appeal is not within this Court's jurisdiction, or because not taken in conformity with statute or with these Rules."

Appellants' claim of jurisdiction, is, therefore, improper and is not taken in conformity with statute or the Supreme Court Rules. Accordingly, Appellants' appeal should be dismissed.

II.

THE UNITED STATES SUPREME COURT LACKS JURISDICTION TO ENTERTAIN AN APPEAL WHEN THE QUESTIONS PRESENTED HAVE NEVER BEEN RAISED, PRESERVED, NOR PASSED UPON BY THE STATE COURTS BELOW.

The questions presented by Appellants were articulated as follows:

I. MAY THE STATE OF MICHIGAN PRECLUDE A PLAINTIFF FROM ASSERTING FEDERAL CIVIL RIGHTS CLAIMS GENERALLY, AND 42 USC 1983 CLAIMS SPECIFICALLY, IN THE STATE COURTS OF MICHIGAN WHEN THE CLAIM IS BASED UPON THE WRONGFUL ACTS OF INDIVIDUAL EMPLOYEES OF THE STATE OF MICHIGAN, ITS BRANCHES OR DEPARTMENTS, ON THE GROUNDS OF GOVERNMENTAL IMMUNITY, REGARDLESS OF THE CAPACITY IN WHICH THE EMPLOYEES ACTED OR THE NATURE OF THEIR ACTS?

II. MAY THE STATE OF MICHIGAN PRECLUDE CIVIL RIGHTS PLAINTIFF WHO BRINGS A CAUSE OF ACTION UNDER 42 USC 1983 FROM A TRIAL BY JURY?

Supreme Court Rule 15.1(g) specifies that a jurisdictional statement must set forth the manner in which the federal questions sought to be reviewed were raised, the stage of the proceedings in which the questions were raised, and the way in which the questions were passed upon by the various courts below.

It is the position of Appellees that because the questions presented were neither raised, preserved nor passed upon in the courts below, the United States Supreme Court lacks jurisdiction to consider this appeal.

In response to Appellants' complaint, against the State and various State officials, Appellees moved for accelerated judgment pursuant to Rule 116.1(2) of the Michigan General Court Rules of 1963, based upon the Circuit Court's lack of subject-matter jurisdiction. The ground upon which said motion was based was that a claim against the State of Michigan and

state officials must be brought in the Michigan Court of Claims, a forum specifically created by statute to consider said claims by 1961 PA 236, as amended, MCL 600.6401 *et seq;* MSA 27A.6401 *et seq.*

Appellants did not file an answer to Appellees' Motion for Accelerated Judgment. At the hearing on said motion, Appellants made no reference to 42 USC 1983.[3] Appellants have never pled or asserted at any time or in any court that the Michigan Court of Claims was precluded from hearing federal claims. Consequently, the courts below did not pass on that question.

The issue of governmental immunity has *never* been raised by any party at any time in any of the courts below. Accordingly, the questions presented were never raised, preserved nor passed upon by any of the state courts which heard Appellants' claims.

The United States Supreme Court has long held that questions not raised nor discussed in state courts cannot be urged in the Supreme Court, *Van Huffel* v *Harkelrode,* 284 US 225; 52 S Ct 115; 76 L Ed 256; 78 ALR 453 (1931); *Aero Mayflower Transit Co* v *Georgia Public Service Com,* 295 US 285; 55 S Ct 709; 79 L Ed 1439 (1935); *International Steel & Iron Co* v *National Surety Co,* 297 US 657; 56 S Ct 619; 80 L Ed 961 (1936); *Spector Motor Service, Inc* v *McLaughlin,* 323 US 101; 65 S Ct 152; 89 L Ed 101 (1944).

Furthermore, Appellants must affirmatively demonstrate from the record not only that the questions were presented to the highest court of the state from which appeal is sought, but also that the state court's adjudication of the questions was essential to the determination of the cause.

---

[3]

See, appellants' appendix E, Circuit Court transcript of March 6, 1981, pages 26a-32a.

In *Lynch* v *People of New York*, 293 US 52; 55 S Ct 16; 79 L Ed 191 (1934), the New York State Tax Commission determined that rents received by a New York resident from property located in another state were taxable as income in New York. The taxpayer appealed, asserting that taxation of the rents by the State of New York worked a deprivation of rights afforded to the taxpayer by the Fourteenth Amendment of the United States Constitution.

The New York Supreme Court annulled the determination of the State Tax Commission citing the United States Supreme Court's construction and application of the Fourteenth Amendment, but did not expressly state that its decision rested upon application of the Constitution of the United States. The Court of Appeals of the State of New York affirmed without opinion.

The State Tax Commission's petition for a Writ of Certiorari to the United States Supreme Court was dismissed for lack of jurisdiction. The Court articulated the rationale for the dismissal as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it." (citations omitted)

Application of the *Lynch* standard to the case at bar compels dismissal of the appeal. For as the record below demonstrates, Appellants have never presented the questions set forth in their Jurisdictional Statement to any of the state courts below.

Accordingly, the federal questions could not have been "necessary to the determination of the cause," *Lynch, supra.*

In *Charleston Federal Savings & Loan Association* v *Alderson*, 324 US 182; 65 S Ct 624; 89 L Ed 587, *reh den* 324 US 888; 65 S Ct 863; 89 L Ed 1436 (1945), appellants contended that tax officials of West Virginia had assessed their property at full value in contravention of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The United States Supreme Court granted appellee's motion to dismiss based upon appellant's failure to explicitly attack the application of the state statute in the courts below, holding that:

> "It is essential to our jurisdiction on appeal under §237(a) [the statutory antecedent to 28 USC 1257] that there be an explicit and timely insistence in the state courts that a state statute, as applied, is repugnant to the Federal Constitution, treaties or laws . . . . [citations omitted] . . ." (commentary added)

See also, *Rohr Aircraft Corp* v *County of San Diego*, 362 US 628; 80 S Ct 1050; 4 L Ed 2d 1002 (1960); *Cardinale* v *Louisanna*, 394 US 437; 39 S Ct 1161; 22 L Ed 2d 398 (1969).

In the case at bar, Appellants utterly failed to articulate in any of the courts below how application of the doctrine of governmental immunity or the Michigan Court of Claims Act, *supra*, would preclude the state courts from hearing their 42 USC 1983 claim. Hence, there was no "explicit and timely insistence in the state court that the state statute, as applied, is repugnant to the Federal Constitution", *Alderson, supra.*

Appellants cite a plethora of federal and state cases involving governmental immunity. Appellees submit that all the governmental immunity cases are inapposite to the proceeding at bar

in that the record below is absolutely devoid of any reference to governmental immunity.

Appellants rely particularly on the case of *Scheuer* v *Rhodes*, 415 US 232; 94 S Ct 168; 40 L Ed 2d 90 (1974). In *Scheuer*, the Federal District Court for the Northern District of Ohio dismissed a claim brought pursuant to 42 USC 1983 on the ground that the action naming certain state government officials and Ohio national guardsmen was, in effect, an action against the State of Ohio, and thus, was barred by the Eleventh Amendment to the Constitution of the United States. The Court of Appeals affirmed, and in an alternative ground of sustaining the dismissal, ruled that the action was also barred by executive immunity. The Supreme Court reversed, holding that a state could not impart to its officials immunity from responsibility to the supreme authority of the Federal Constitution.

Scheuer, has no syllogistic relation to, and hence, does not control the proceeding at bar because it was an action brought in Federal District Court which expressly addressed the question of governmental immunity in the court of first instance, as well as throughout the appellate process. The case at bar, in contrast, was brought in state court and is a case in which the "issue" of immunity was never asserted, pled, waived or otherwise mentioned in any of the proceedings below.

Accordingly Appellees submit that the appeal should be dismissed pursuant to Supreme Court Rule 16.1(b) on the ground that the federal question sought to be reviewed was not timely or properly raised or preserved and as a result, was not expressly passed upon by the courts below.

CONCLUSION

Appellants' appeal is untimely and is based upon the wrong jurisdictional statute. The issues presented to this Court have not been raised, preserved nor passed upon, either expressly or implicitly by the state courts below. Therefore, in accordance with Supreme Court Rule 16, paragraphs 1(a) and 1(b), Appellees' Motion to Dismiss should be granted.

Respectfully submitted,

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No. 83-19

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT IN OPPOSITION TO MOTION TO DISMISS OF APPELLEES

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QUESTIONS PRESENTED BY APPELLEES

1. Whether Appellants may invoke the jurisdiction of this Court pursuant to 28 USC 1252, when the appeal neither arises from a judgment, decree or order of a federal court, nor involves the constitutionality of an Act of Congress and is not taken in conformity with statute and the Supreme Court Rules.

2. Whether the United States Supreme Court has jurisdiction over an appeal when the federal questions presented were not raised, preserved, nor passed upon, either expressly or implicitly, by any of the courts of the State of Michigan which considered Appellants' claims.

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IN THE SUPREME COURT OF THE UNITED STATES

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STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees.

STATEMENT IN OPPOSITION TO MOTION TO DISMISS OF APPELLEES

The Motion To Dismiss of Appellees[1] demonstrates the disdain with which Appellees view due and orderly process of law, the paucity of reason underlying the decision appealed from and the lengths to which Appellees (represented by the Attorney General of the State of Michigan) will go to avoid establishing any cogency in Michigan law as it relates to governmental immunity and general civil jurisdiction of Michigan Courts over federal civil rights actions involving State associated individuals.

No one was misled by the scrivener's error complained of in mis-citing 28 USC § 1257 as § 1252 relied upon by Appellees as a ground for dismissal.

Appellees admit 28 USC § 1257 is the "relevant jurisdictional statute" (Motion, p. 8). The requirements of 28 USC § 1257 have been met.

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[1] References are designated "Motion p__.

Appellees have no basis whatsoever to support the decision of the Michigan Courts in the case at bar. They wish to exempt Michigan from the rules of law applicable in Federal Courts and all other State Courts. These rules of law are summarily dismissed (as was the Complaint in this case) as being found in a "plethora of federal and state cases" cited in Appellant's Jurisdictional Statement. Apparently the super abundance of authority contrary to the unique position of the Michigan Courts has not been persuasive to those Courts. At first blush (and at last) this calls for examination by this Court by noting probable jurisdiction if the dual system of justice overseen by this Court is to operate consistently, and not for dismissal on a scrivener's error which was not misunderstood and which prejudiced no one.

COUNTER-STATEMENT

The so called ". . . facts underlying this appeal . . ." are recited on pp. 1-4 of the Motion. There is no citation to the record below nor any Appendix filed.

As Appellants pointed out in its Jurisdictional Statement, (p. 4), there is no evidence, no answer, no opinion, in the record. However, to color this Court's view, the Attorney General does say Mr. Crane (one of the Appellants) operates "inner city motels" (Motion, p. 2). What this means as regards legality or morality is not clear. But, it is clear such a conclusion or characterization is not in the record. Also, Appellees must assume that there is something sinister about the names and addresses of the motels appearing on page 2 of the Motion. In another "underlying fact", set forth without citation to record or appendix, the Appellees confided that this Appeal involves ". . . the fourth of eleven lawsuits filed by Mr. Crane . . ." My goodness. (Motion, p. 3) Strongly, this suggests that now is the time to settle the law.

To further color the matter, this Court is assured that Mr. Crane has been guilty of "criminal violations". No

record or Appendix citations are made, and, as a matter of law, it is irrelevant. That it is also false doesn't seem to concern the Appellees.

The Appellees also take comfort from the issuance of a "tax warrant and Notice of levy" but ignore that this is one of Appellees' actions of which complaint is made.

The proceedings to this point which are relevant are:

1. The complaint filed in the Circuit Court for the County of Wayne, State of Michigan, alleged violations of Appellants' Federal constitutional and Federal statutory rights. (See, Appellants Jurisdictional Statement pp. 4-6 and App. D pp. 7-34a)

Appellees admit this on page 3 of their Motion.

2. The Circuit Court dismissed the Complaint on a motion for Accelerated Judgment on the ground it lacked subject matter jurisdiction (App. 5-6 a) stating from the bench that Appellant's remedy was in the Michigan Court of Claims. (App p. 30 a)

3. The Michigan Court of Appeals and Michigan Supreme Court affirmed, (App. pp. 1-4)

4. On July 8th, a Notice of Appeal was filed in the Supreme Court of Michigan and the Jurisdictional statement and related papers of Appellants were filed in this Court.

5. The Jurisdictional Statement mis-cited the Section of the United States Code under which the Appeal was filed on pp. iv., 2 and 17, citing 28 USC §1252 rather than 28 USC §1257.

6. The Motion to dismiss was filed on the grounds that

1. There is no jurisdiction in this Court under § 1252.

2. The issues raised in the Appeal to this Court were not raised below.

REPLY TO ARGUMENT

I.

Appellants will admit that appeals under 28 USC § 1252 are expressly limited to appeals from federal courts holding an act of Congress unconstitutional.

This action was not in a federal court.

Appellees concede 28 USC § 1257 was the "relevant jurisdictional statute upon which Appellants could have based their appeal", but say now that the ninety days allowed under 28 USC § 1257 has passed.

The ninety days had not passed at the time of filing the Notice of Appeal in the Michigan Supreme Court on July 8, 1983.

There has been no surprise.

Reading of 28 USC § 1252 obviously has led the Attorney General to 28 USC § 1257 which he concedes is the relevant statute.

The "C O N C L U S I O N" in the Jurisdictional Statement asks that the Appeal be considered in the alternative as an Application for a Writ of Certiorari, 28 USC § 1252 does not mention this alternative, 28 USC § 1257 does.

The cases cited by Appellees under Argument I of the Motion to Dismiss are not persuasive toward accomplishing dismissal.

The first case cited and quoted from the Appellants, *Ansboro* v *United States* (1895) 159 US 695; 16 S Ct 187, 40 L Ed 310, has absolutely nothing to do with the issue of timely filing. The case dismissed a writ of error under the then appropriate Supreme Court jurisdictional statute which allowed appeals by writ of error, (1) upon certification from the Court below, (2) upon conviction of an infamous crime, and (3) where the constitutionality of a law of the United States was in question. This Court found that the first two

grounds were not involved and the record did not show the constitutionality of a United States Statute was necessarily and directly raised by Ansboro, supra, in ". . . motions to quash, to instruct the jury . . . for new trial, and in arrest of judgment . . . nor to instructions or the refusal of instructions . . .". Reciting these proceedings the Court found no "suggestions" of denial of a constitutional right. Ansboro obviously had a full trial to explore the facts through evidence and the litany of vehicles to raise the issue. Here the only vehicle was the Complaint because Appellants had no trial, no discovery, no evidence, no instructions, etc. The Complaint raised Constitutional issues and violations of Federal statutory rights. By their Motion for Accelerated Judgment, Appellees said that the lack of fact finding made no difference since Michigan's immunity law obviates those issues. *Ansboro*, supra, rather then supporting Appellee's position on Argument I (it has nothing to do with timely filing) really supports Appellants on Argument II. Immediately prior to the portion of *Ansboro*, supra, quoted on page 5 of the Motion to Dismiss, it is said that the violation of the federal rights must be "directly deducible" from the "record". *All* that is "deducible" from the "record" in the summary proceedings below is that Appellants claimed federal rights and Appellees said "not here we are immune because of Michigan law". What is "directly deducible" is that the claimed federal rights are invalid in Michigan.

Shapiro v *Jane Doe* (1970) 396 US 448, 24 L Ed 2d 677, 90 S Ct 641, involves a failure to docket. There is no majority opinion and Appellants discussion involves a dissenting opinion. *Taggert* v *New York*, (1968) 392 US 667; 88 S Ct 2317, 20 L Ed 2d 1360 (1969) is a Per Curiam decision.

Donovan v *Richland County Association* (1982) 454 US 389, 70 L Ed 2d 570, 102 S Ct 713 stands for the proposition that Courts of Appeal have no appellate jurisdiction over District Court decisions where a direct appeal is available to the Supreme Court under 28 USC 1291. The majority in that case (which had been appealed to and decided in

the Court of Appeals) decided that the time that had passed and the erroneous procedural process required dismissal without remand to the District Court so that a proper appeal directly to the Supreme Court could be made. This Court reasoned the passage of time frustrated the purpose of immediate review by the Supreme Court of federal statutes held to be unconstitutional in Federal Court. In the case at bar there was no delay beyond the period contemplated by the "relevant" jurisdictional statute (Motion, p. 8).

II.

The argument of Appellees under ARGUMENT II is just plain wrong.

The case at bar is a case asserting violation of United States Constitutional rights and Federal statutory rights. (Jurisdictional Statement, pp. 4-6; App D, Complaint pp. 9a, 15a, 21a, 23a, App E., Transcript 29a, 3a; Appellees admission on page 3 of Motion).

There was no answer, no discovery, no evidence in the proceedings below.

The Courts below decided that the Circuit Courts of the State of Michigan (courts of original jurisdiction) had no jurisdiction over the subject matter of the Complaint.

At the hearing on accelerated judgment in the trial court below, counsel for the Appellees said:

". . . Plaintiffs were in the wrong Court."

". . . They were not in the proper Court." (App. p. 28a)

The Trial Judge at the same hearing said:

"THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim of damages.

You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.

Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we re at, sir. You're very well versed. You understand exactly what's going on and you're representing yourself. You're not an attorney, and eminently qualified. You have done an outstanding job, in the Court's view, as an attorney, even though you're not. Therefore, I don't think the Court has taken advantage of you, and I certainly don't think Mr. Brockman has taken advantage of you.

The fact is . .

MR. CRANE: These are constitutional questions that . . .

THE COURT: No, these are constitutional questions that can be answered within the realm and within the scope of the judgment that you seek in the Court of Claims. It doesn't mean that they hear your claim there with shutters, with mental shutters. They will listen to all of it, what your contentions are, to decide whether or not you have a claim against the State. That's the place to go.

Now, I'm not going to assess any costs, and I'm not going to assess any attorney fees. The reason I'm doing it is because I think you and your family are properly concerned that you at least have somebody in some form to hear your claim. I don't think you're really — you're aggravated, I think. I think you're mad and

unhappy, but that's neither here nor there. I think you're still entitled to have somebody hear your claim. I think you ought to go to the Court of Claims is the place to have that done.

The Court of Claims of the State of Michigan is a statutory Court of limited jurisdiction over claims against the ". . . State or any of its departments, commissions, boards, institutions, arms or agencies . . ." otherwise not assertible because of Governmental immunity. MCLA 600.6419.

It has no jurisdiction where the claimant has a remedy in Federal Court. MCLA 600.6440.

There can be no jury trial. MCLA 600.6440.

At the heart of this matter is Appellee's pretended dismay that Appellants' "utterly" failed to "articulate" in an "explicit and timely manner" that the state law "as applied" violated federal rights.

This is nonsense.

Counsel for Appellees argues that the case belonged in the Court of Claims, which as here relevant, was established to hear claims otherwise not actionable because of immunity.

If immunity wasn't the ground for the decision below — what was? Appellees don't suggest another ground and they did not raise it below.

Appellees dismiss the "syllogistic" relation to *Scheuer* v *Rhodes*, 415 US 232; 94 S Ct 168; 40 L Ed 2d 90 (1974) because it *was* an *"immunity"* case and *it was* in "Federal District Court" by saying *immunity* was *"never asserted"*, pled, waived or otherwise mentioned in this case in the *state Court*. A fortiori, *Scheuer* v *Rhodes* dictates reversal if this is an immunity case and the same law applies in Michigan Courts as in Federal Courts.

The "plethora of federal and state court cases involving governmental immunity" cited by Appellants and dismissed by Appellees "as inopposite" (Motions, pp. 13-14) certainly teach that the same rules of law are applicable in state and federal court cases. They are applicable to the case at bar.

Cases cited by Appellees state that this Court will not decide issues not decided below.

Appellants take the position that all that was decided below was that federally granted rights could not form the basis of our action in Michigan Courts because of governmental immunity. Appellees do not suggest any other ground.

However, the cases cited (Motion, pp. 10-12) do deserve more detailed examination than given by Appellees. In both *Rohr Aircraft Corp.* v *County of San Diego*, 362 US 628; 80 S Ct 1050; 4 L Ed 2d 1002 (1960), and *Charleston Federal Savings & Loan Association* v *Alderson*, 324 US 182; 65 S Ct 624; 89 L Ed 857, the Court treated the appeal as an Application for a Writ of Certiorari and decided the case.

International Steel & Iron Co v *National Surety Co*, 297 US 657; 56 S Ct 619; 80 L Ed 691 (1936) holds that the rule that this Court will not take jurisdiction to determine a federal question when a state Court decision may rest on a non-federal ground does not apply where a non-federal ground might have been considered by the state court but was not. In the case at bar only denial of the federal right under Michigan law could have been the ground for the decision below. *Again*, Appellees suggest no other.[2]

Neither *Spector Motor Service, Inc* v *McLaughlin*, 323 US 101; 65 S Ct 152; 89 L Ed 101 (1944) nor *Cardinale* v *Louisanna*, 394 US 437; 39 S Ct 1161; 22 L Ed 2d 398 (1969) involved the end of litigation. In the former a

[2] In reality, Appellees ask for dismissal, not because there was another ground, but, because there might have been. They do not say what it could have been. If the Courts are being asked to decide theoretical questions, it is because Appellees, not Appellants, are doing it.

supplementary injuction was continued pending decision in the State Court and in the latter it was noted Habeas Corpus was available to determine the issue. Also, in the former it was noted that the rule Appellees seek to invoke was to avoid "preliminary guesses". In the case at bar there is none.

Perhaps *Lynch* v *People of New York*, 293 US 52; 55 S Ct 16; 79 L Ed 191 (1934) is most illuminating for in its statement of the rule it has the language:

> ". . . or that the judgment as rendered would not have been given without deciding it."

The decisions could not have been given without deciding the questions posed by Appellants.

Other cases cited by Appellees in Argument II do not indicate anything other than the rules discussed above.

CONCLUSION

The Motion to Dismiss should be denied and probable jurisdiction noted.

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